IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4111 OF 2004
WITH
CRIMINAL APPEAL NO.64 OF 1996

Shri Yellappa Pandurang Bhogan
Age: 42 years, Occ: Agri.
R/o. Mahipal Gad,
Tal: Chandgad,
Dist: Kolhapur ...Applicant/
Appellant

V/s

1. The State of Maharahstra
2. Mallappa Pandurang Bhogan
Age: 50 years, Occ: Agri,
R/o. Mahipal Gad,
Tal: Chandgad,
Dist: Kolhapur ...Respondents.

Mr. Rahul S. Kate for the applicant.

Mr. D.P. Adsule, APP for respondent No.1 - State.

Ms. Rutuja Ambekar for respondent No.2.

CORAM: V.M.KANADE,J.

DATE: 9th December, 2004

P.C.

1. Heard the learned Counsel appearing on behalf of the applicant/appellant, the learned APP appearing on behalf of the State and the learned Counsel appearing on behalf of respondent No.2.

2. This is an application seeking permission to compound the offence under section 320(5) of Cr.P.C.

It is submitted that the applicant and respondent No.2 are related with each other and the applicant is the real brother of the complainant. The applicant is convicted under section 307 of the Indian Penal Code and is sentenced to suffer R.I. for five years and to pay fine of Rs 1000/- and, in default, to suffer R.I. for one month.

3. Prosecution's case is that the alleged incident took place on 01/11/1994 at about 7.45 p.m. and the allegation of the complainant was that the applicant assaulted him by giving two blows of knife in his stomach. The complaint was lodged by respondent No.2.

4. So far as the application for compounding of the offence under section 320 of the Cr.P.C. is concerned, since the applicant in the present case is convicted under section 307 of the Indian Penal Code, the offence is not compoundable and, therefore, application for compounding the offence is rejected.

5. However, having regard to the facts and circumstances of the case, particularly since the incident in question has taken place on 01/11/1994 and 10 years have passed and the fact that both, the accused and the complainant are now residing in the

same house peacefully and amicably, the sentence of the appellant is reduced to the period already undergone. The learned Counsel appearing on behalf of the appellant has relied upon the judgment of the Supreme Court in the case of **Jalaluddin Vs. State of U.P.** reported in **(2002) 9 SCC 561** wherein the Apex Court in similar case has reduced the sentence. The facts in the present case are almost identical.

6. Accordingly the following order is passed:-

O R D E R

. Appeal is partly allowed.

. Conviction is confirmed. However, the sentence is reduced to the period already undergone by the accused. Accused is on bail. His bail bonds shall stand cancelled.

V.M. KANADE, J.